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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,796	03/31/2004	Christine J. Leinbach	E1452-00001	7566

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IP DEPARTMENT
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EXAMINER

LUSTUSKY, SARA

ART UNIT

PAPER NUMBER

3735

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/813,796

Applicant(s)

LEINBACH, CHRISTINE J.

Examiner

Sara Lustusky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 3/31/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Drawings

The drawings are objected to because there are black and grey shaded areas and specs. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because:

Reference character "60" has been used to designate the stitching (as seen in Figures 1, 5 and 7) but was described as designating both the stitching and the heart

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shaped patch (as described in line 2 of paragraph [0022] and line 1 of paragraph [0024] of the specification);

Reference character "50" was described as designating both the mouth and the heart-shaped patch (as seen in Figure 1) (as described in line 2 of paragraph [0022] and in line 1 of paragraph [0027] of the specification); and

Reference character "40" was used to indicate the mouth (as seen in Figure 1) but was undefined (as described in line 1 of paragraph [0027] of the specification).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: (90) as seen in Figure 1. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing

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sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities: the description "the heart appliqué" in line 1 of paragraph [0027] is unclear.

Appropriate correction is required.

Claim Objections

Claims 1, 7 and 9-11 are objected to because of the following informalities:

The recitation "one of" in lines 3 and 5 of claim 1 should read - - one of a group consisting of - -;

The recitation "one of a raised" in line 2 of claim 7 should read - - one of a group consisting of - -;

At line 1 of claims 9 and 10, "use" should be deleted;

The recitation "one of a substantially weighted" in line 3 of claim 11 should read - - one of a group consisting of a substantially weighted - -.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation “weight bearing” in line 7 of claim 1 is unclear because it implies that the apparatus must be capable of sustaining a load or weight, however the description from the specification (as described in lines 5-6 of paragraph [0025]) describes that the filling itself is heavy and has a substantial weight.

It is unclear whether the “removable pouches of a scented material”, recited in line 2 of claim 9, is meant to be positively claimed in view of the claim language.

The recitation “envelope dimensioned to occupy the person’s attention” in line 5 of claim 11 is unclear because the attention of a person is subjective and therefore the claim language is indefinite.

Further regarding claim 11, at lines 4 and 6, it is unclear whether or not the method definitely comprises an animal.

Further regarding claim 11, it is unclear how the envelope is being limited at line 7.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6, 11 and 12 are rejected under 35 U.S.C. 102(a) as being anticipated by Southpaw Enterprises (2003).

Southpaw Enterprises teaches a apparatus and method of using the apparatus for stimulating a person by providing to the person a substantially weighted animal, in the form of an animal including a pet, comprising a flexible envelope containing a densely weighted filling such that the animal weighs from about one to three kilograms; wherein the flexible envelope is about 50cm in length and about 20cm in width and defined by a fabric cover (as described by the product description and instruction pages for 240010, 240020, 240030 and 240040).

Claims 1 and 3-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Koike (Patent 6511361 B2).

Koike teaches an apparatus comprising a flexible envelope in a form recognizable as one of an animal, a person, a cartoon version of an animal or person and other natural objects, for example a teddy bear (as described by the embodiment in lines 49-51 of column 3), having a length and width dimensioned to be held by a person;

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a weight bearing, resilient filling substantially distributed over a length and width or the envelope, wherein the weight is between about one and three kilograms (as described in lines 9-20 and 27-31 of column 2); wherein the envelope is defined by a fabric cover comprising simulated fur (as described in lines 57-61 of column 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Koike (Patent 6511361 B2).

Koike teaches the apparatus of claim 1, as described above, comprising a weighted stuffed envelope in the shape of an animal, person, a cartoon, or other natural objects having a length and width dimensioned to be held by a person. While Koike teaches that the apparatus may be made in the form of any animal or character, in any shape (as described in lines 55-56 of column 2), Koike does not expressly teach a length of about 50cm or a width of about 20cm.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to make the apparatus of Koike about 50cm in length and about 20cm in width because Applicant has not disclosed that these dimensions provide an advantage, is used for a particular purpose, or solves a

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stated problem. Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention that the length and width of some animal or character shapes would require that the length of the apparatus be greater than the width of the apparatus (i.e. a snake).

Therefore, it would have been prima facie obvious to make the apparatus of Koike with a length of about 50cm and a width of about 20cm to obtain the invention as specified in claim 2 because such dimensions would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Koike.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koike (Patent 6511361 B2) in view of Leyser (Patent 5489231).

Koike teaches the apparatus of claim 6, as described above, comprising a weighted stuffed envelope in the shape of an animal, person, a cartoon, or other natural objects wherein the envelope is defined by a fabric cover. While Koike teaches that the fabric cover may be a cloth or other soft material, raised wale or corduroy fabric is not expressly taught.

Leyser teaches a stuffed envelope in the shape of an animal or character wherein the envelope comprises a fabric of corduroy, which is a type of raised wale (as described in lines 37-41 of column 4).

It would have been obvious to one of ordinary skill in the art at the time of the invention to make the envelope of the apparatus of Koike out of corduroy because it is a

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cloth and a soft material that can be texturized to produce various features of an animal, person or character (as described in lines 44-54 of column 4).

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koike (Patent 6511361 B2) in view of Kaplan (Patent 6193577 B1).

Koike teaches the apparatus of claim 6, as described above, comprising a weighted stuffed envelope in the shape of an animal, person, a cartoon, or other natural objects. However, Koike does not teach that the apparatus has a pouch for scented materials.

Kaplan teaches a stuffed envelope in the shape of an animal or character comprising a pouch containing scented materials (as described in lines 23-31 and 57-58 of column 3; in lines 1-6 and 20-24 of column 4). While Kaplan describes types of scented materials used in aromatherapy (as described in lines 9-15 of column 2), it is not expressly taught that the scented materials include lavender. However, it would have been commonly known to one of ordinary skill in the art at the time of the invention that lavender is a popular scent in aromatherapy (as also indicated by Applicant in lines 3-5 of paragraph [0028] in the specification).

It would have been obvious to one of ordinary skill in the art at the time of the invention to make an apparatus similar to that of Koike with a pouch filled with scented materials, including lavender, similar to that of the apparatus of Kaplan because aromatherapy addresses physical, emotional and spiritual imbalances, would enhance

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the apparatus of Koike (ex. could include a favorite scent of the person receiving the apparatus).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bodor (Patent 3737196) teaches various fabric coverings for stuffed envelopes in the shape of an animal or character. ABLEDATA (2001) teaches various fabrics which stimulate the senses.

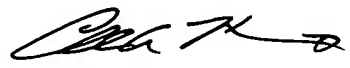
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sara Lustusky whose telephone number is (571) 272 8965. The examiner can normally be reached on M-F: 9 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on (571) 272 4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


S.L.


Charles A. Marmor, II
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